

REMARKS

I. Status of the Application

By the present amendment, Applicant adds claims 26-29 to more fully cover the invention. Claims 3-9, 11, 14-20 and 22-29 are all the claims pending in the Application, with claims 3-4, 8, 14-15 and 19 being in independent form. Claims 3-9, 11, 14-20 and 22-25 have been rejected.

The present Amendment addresses each point of objection and rejection raised by the Examiner. Favorable reconsideration is respectfully requested.

II. Claim Rejections Under 35 U.S.C. § 112

A. Rejections of Claims 1 and 14

Claims 1 and 14 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Specifically, the Examiner alleges that claims 1 and 14 recited the feature of determining whether any rule has been “satisfied” in an interval and that the specification is devoid of any support for this feature. Applicant respectfully traverses these rejections for *at least* the reasons set forth below.

As an initial matter, Applicant notes that claim 1 has been previously canceled without prejudice or disclaimer and, therefore, the Examiner’s rejection of claim 1 is in error. Thus, Applicant assumes that the Examiner intended to address his rejections to claims 3 and 14, since these are the only pending claims which employ the term “satisfied,” and Applicant has addressed the current rejections accordingly.

As set forth above, Applicant has amended claims 3 and 14, to more clearly recite the feature of “determines whether any rule has been satisfied during an interval between said first

time and said second time,” and submits that this recitation is firmly supported *at least* by page 13, lines 3-15 and FIG. 6 of the originally filed specification.

Indeed, to comply with the written description requirement, the specification need not describe the claimed subject matter in exactly the same terms as used in the claims.¹ Quite to the contrary, MPEP § 2163.02 specifies that to satisfy the written description requirement, an applicant need only convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention.

The original specification clearly conveys to those skilled in the art that Applicant was in possession of the claimed feature of determining whether any rule has been satisfied during an interval between said first time and said second time. Particularly, the present specification describes that the analyzer 16 starts analyzing as to whether there is any rule in an interval in arrival times of the packets associated with the monitoring parameter in step S29. Page 13, lines 3-5. Further, the specification explains that a certain rule in an interval in arrival times of the packets may be comprised of that packets arrive in every X seconds, or that packets arrive alternately in every X and Y seconds, for example.

One of ordinary skill in the art would readily discern that the discussion of “in an interval” in the specification simply refers to the fact that the packet analysis occurs sometime after the packet is received by the packet monitoring device. *See, e.g.*, page 7, lines 20-25. In other words, the packet is received by the packet monitoring device and the packet information is stored and the packet is forwarded to its destination. Then, the packet monitoring device

¹ *Dental Prodx, LLC v. Advantage Dental Prods.*, 309 F.3d 774, 779; 64 USPQ2d 1945, 1950 (Fed. Cir. 2002).

performs the analysis. In this way, the packets are not delayed in passing through the packet monitoring device.

Moreover, a skilled artisan would recognize that the concept of “finding a certain rule in an interval” (*see, e.g.*, 13, lines 3-5) entails, for example, comparing the counter for a particular monitoring parameter to the threshold for a given monitoring parameter.

Therefore, Applicant submits that claims 3 and 14 satisfy the requirements of 35 U.S.C. § 112 for *at least* these reasons and respectfully requests that the Examiner withdraw these rejections.

B. Rejections of Claims 4 and 15

The Examiner has rejected claims 4 and 15 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement because the Examiner alleges that the recitations of monitoring an interval between which packets arrive at said end-user from said application server and vice versa, and making an annunciation when said interval is constant, are not supported by the original specification. Applicant respectfully traverses these rejections for *at least* the reasons set forth below.

Applicant has amended claims 4 and 15, as set forth above, to delete the recitation “if said interval is constant.” Therefore, Applicant submits that the Examiner’s rejections with respect to claims 4 and 15 are now moot.

Indeed, the recitations of monitoring an interval between which packets arrive at said end-user from said application server and vice versa, and making an annunciation are adequately supported by *at least* by page 13, lines 3-15 and FIG. 6 of the originally filed specification.

Thus, claims 4 and 5 satisfy the requirements of 35 U.S.C. § 112 for *at least* these reasons and Applicant respectfully requests that the Examiner withdraw these rejections.

III. Claim Rejections Under 35 U.S.C. § 103

Claims 3, 6-9, 11, 14, 17-20, and 22-25 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Abraham in view of Nickles, both of which are previously of record. Claims 4, 5, 15, and 16 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Abraham in view of Engel. Applicant respectfully traverses all of these rejections for *at least* the reasons set forth below.

In order for the Examiner to maintain a rejection under 35 U.S.C. §103, the cited references must teach or suggest all of the recitations of claims 3-9, 11, 14-20 and 22-28. Applicant respectfully submits that Abraham, Nickles, Engle, and any combination thereof, fails to teach or suggest all of the recitations of claims 3-9, 11, 14-20 and 22-28.

For example, independent claim 3 recites (among other things):

...wherein said packet monitor device is configured to monitor at least one of a data sequence of said packets, a service identifier of said packets and a checksum of said packets.

Support for these amendments is provided by *at least* page 8, lines 7-17 of the present application and no new matter has been added. Neither Abraham, Nickles, Engle, nor any combination thereof, teaches or suggests these features. Indeed, Abraham fails to provide any teaching or suggestion that the filter executive disclosed therein is configured to monitor at least one of a data sequence of packets, a service identifier of packets or a checksum of packets, as claimed. Further, neither Nickles nor Engle remedy the deficient teachings of Abraham.

Therefore, Applicant submits that claim 3 is patentable over the cited references, and any combination thereof, for *at least* these reasons. Further, Applicant submits that the dependent claims 6-7 and 25 are patentable *at least* by virtue of their dependency.

Independent claims 4, 8, 14, 15 and 19 recite similar features to claim 2 and, therefore, are patentable for *at least* reasons analogous to those presented above. Moreover, Applicant submits that claims 5, 9, 11, 16-20 and 22-24 are patentable *at least* by virtue of their respective dependencies.

Accordingly, Applicant respectfully requests that the Examiner withdraw these rejections.

IV. New Claims

Applicant hereby adds new claims 26-29 to more fully claim the present invention. Claims 26-29 are fully supported *at least* by page 9, lines 1-5 and pages 10-13 of the originally filed specification. No new matter has been added.

Applicant submits that claims 26-29 are patentable *at least* by virtue of their dependencies.

V. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

AMENDMENT UNDER 37 C.F.R. § 1.114(c)
U.S. Application No.: 09/788,566

Attorney Docket No.: Q63195

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

/ Andrew J. Taska /

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

Andrew J. Taska
Registration No. 54,666

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: October 31, 2007